

BEFORE THE
CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

In the Matter of:

GARRY JAMES CRUISE
a.k.a. COLIN DAVID CAMPBELL
License No. 246463-01/00

Appellant.

Case No. 97BM206

OAH No. N 1999080423

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, State of California, Office of Administrative Hearings, heard this matter on September 28, 1999, in Oakland, California.

Deputy Attorney General Mary S. Cain represented the California Horse Racing Board.

Appellant Garry James Cruise, also known as Colin David Campbell, was represented by David M. Shell, Attorney at Law, 8788 Elk Grove Boulevard, Building 2, Suite F, Elk Grove, California 95624.

The record was held open for the parties to submit written argument, and for appellant to submit an additional transcript. The transcript of the February 25, 1999 hearing was received and marked as Exhibit B in evidence. The Board's Supplemental Brief was received and marked as Exhibit 4 for identification. Appellant's Opening Brief was received and marked as Exhibit C for identification. The Board's Closing Supplemental Brief was received and marked as Exhibit 5 for identification. Appellant's Reply Brief was received and marked as Exhibit D for identification. The matter was deemed submitted on October 18, 1999, the date the last brief was received.

BACKGROUND

A. Complaint

On January 27, 1999, the California Horse Racing Board (“Board”) filed an amended complaint against apprentice jockey Garry Cruise, also known as Colin Campbell, alleging the following violations of Board rules:¹

Rule 1484 (unfitness for license), in that Cruise’s license as an exercise rider, held in the name Colin Campbell, was suspended by the Board on December 12, 1992 for failure to appear before the Board of Stewards.

Rule 1489(a)/1900² (conviction of crime involving moral turpitude), in that Cruise was convicted on September 22, 1994 of a violation of Penal Code section 484e(1) – acquiring access card without cardholder’s or issuer’s consent.

Rule 1489(c)/1900 (material misrepresentation or false statement in license application), in that on Cruise’s June 1997 application for an apprentice jockey license he answered “No” to questions asking him whether he had ever been convicted of an offense by a court, whether any license of his to participate in racing had ever been revoked or suspended for more than 10 days, and whether he had ever used another name in obtaining a license from any Racing Commission.

Rule 1489(f)/1900 (subject to exclusion or ejection), in that Cruise’s previous exercise rider license had been suspended.

Rule 1489(g)/1900 (act involving moral turpitude; or acts in connection with horse racing which were fraudulent or in violation of trust or duty), in that Cruise filed fraudulent license applications with racing authorities in the states of Washington, Oregon, California and New York, and in Ontario, Canada.

Rule 1489(j)/1900 (violation of rules or of Horse Racing Law), in that Cruise committed the numerous violations alleged in the complaint.

Rule 1500(a) (definition of apprentice jockey), in that Cruise was not eligible for licensure as an apprentice jockey, because he was initially licensed as such in England in 1988.

¹ Board rules are found in title 4, California Code of Regulations.

² Rule 1489 sets forth grounds for denial or refusal of a license, and rule 1900 provides that grounds to deny a license also constitute grounds to suspend or revoke a license.

Rule 1547 (failure to appear), in that Cruise in 1992 failed to appear before the Board of Stewards to answer charges of violating rule 1489(f).

Rule 1902 (conduct detrimental to horse racing), in that Cruise suffered the 1994 criminal conviction; he was suspended by the Board in 1992 for failing to appear; following his return to the United States from England under a new name, he fraudulently obtained licenses in Oregon, California and Ontario, Canada, and filed fraudulent license applications in Washington and New York; his New York application was suspended; and his Ontario license was suspended indefinitely.

B. Stewards' Decision

Following a hearing held on February 25 and June 2, 3, 4 and 5, 1999, the Board of Stewards on June 20, 1999 issued a Statement of Decision containing Findings of Fact, Conclusions of Law and Ruling No. 66. The Stewards made the following Findings of Fact:

I

Apprentice jockey Garry Cruise, CHRB license #246463/01-00 and exercise rider Colin Campbell, CHRB license #223442/01-95 (expired) are one and the same person (hereinafter Respondent).

II

Respondent was licensed and rode in Great Britain from 1988 to 1991 and in 1994 garnering a reported 3 winners from approximately 90 mounts.

III

Steward Darrel McHargue testified that respondent and jockey agent JOE SANTOS appeared in June of 1992 to request that respondent be issued and [sic] apprentice jockey license. No license of any nature was issued on that date.

IV

On or about July 14, 1992 respondent applied for and received an exercise rider license at the Solano County Fair, Vallejo, California. License was issued under his given name of Colin Campbell.

V

On September 1, 1992 respondent was arrested by the San Mateo County authorities for alleged violation of Penal Code 484 E (1). Respondent was booked and was released on September 11, 1992 on cash bail. Respondent failed to appear for scheduled Hearings and Civil Bench Warrants were issued. Respondent appeared at the San Mateo Municipal Court, Redwood City, California and was convicted of the above charges on September 22, 1994. Respondent pled nolo contendere and was sentenced to thirty days confinement and eighteen months probation.

VI

On December 12, 1992, Ruling No. 103 was issued by the Board of Stewards at Bay Meadows Racetrack which suspended respondent (Campbell) for failure to appear, a violation of CHRB Rule 1547(f) (Grounds for Denial or Refusal of License – Criminal Arrest) alleged in CHRB case #92BM0368.

VII

Documentation submitted declared that on or about March 13, 1997 respondent legally changed his name from Colin Campbell to Garry Cruise. Respondent testified that the mispronunciation and the connotation of the name Colin in the United States was embarrassing. He felt that Garry Cruise was and has been a more professional name.

VIII

On or about May 15, 1997 respondent applied for and received an apprentice jockey license and apprentice jockey certificate from the Oregon Racing Commission under the name Garry Cruise.

IX

According to records provided by respondent his first race as an apprentice jockey in North America was on May 18, 1997 at Grants Pass, Oregon. The date of his first winner was on May 25, 1997 at the same location.

X

On or about June 10, 1997 respondent applied for and was granted an apprentice jockey license in California. Respondent applied for [a] license under the name of Garry Cruise and submitted an Oregon Apprentice Jockey Certificate as a supporting document.

XI

On or about June 10, 1997 respondent falsely answered “no” to the following three questions on his California license application: 1) Have you ever been convicted of an offense by a court? 3) Has your license(s) to participate in racing EVER been revoked or suspended for more than ten days? 4) Have you EVER used another name in obtaining a license from any Racing Commission?

XII

Respondent stated he was ashamed of his conviction and answered NO to question #1 because he just wanted it behind him.

XIII

Respondent stated that he was never notified of a hearing and had no way to know he was suspended for failure to appear. Consequently respondent answered NO to question #3.

XIV

Respondent stated he was confused regarding the term of “Racing Commission” in question #4, which is why he answered “No” and failed to acknowledge he was previously known as Colin Campbell.

* * *

In their Conclusions, the Stewards vacated Case #92BM0368 and Ruling No. 103 and incorporated the charges into the current hearing.

The Stewards concluded that Cruise “intentionally avoided any reference to his criminal or prior license history under his given name of Colin Campbell when applying for an apprentice jockey [license] in California in 1997,” thereby violating rule 1489(c)

(material misrepresentation or false statement in license application) and rule 1902 (conduct detrimental to horse racing).

The Stewards concluded that:

[R]espondent changed his name to avoid admission of his prior licensing and riding history in the United Kingdom. Respondent['s] stated reason for changing his name is weak at best since ... it was only his first name which seemed to cause him concern. Had respondent disclosed his prior licensing and riding history in the United Kingdom, which commenced in 1988, his application for an apprentice license would have been denied. In violation of CHRB requirements as addressed in Rule 1500(a) (Apprentice Jockey).

* * *

In Ruling No. 66, the Stewards took the following actions:

- They suspended Cruise's apprentice jockey's license for the balance of its term (to January 31, 2000) and imposed a \$1,000 fine under rule 1900, for violation of rule 1489(c) and rule 1902.
- They ordered that Cruise be denied any future apprentice jockey status in California for failure to meet the requirements of rule 1500(a).
- They ordered that under rule 1484 (unfitness for license) Cruise would be deemed unfit to hold a license or participate in racing in this state as a licensee during the term of any suspension or exclusion from racing imposed by any competent racing jurisdiction.
- They ordered that during the term of suspension, all licenses and license privileges of Cruise would be suspended, and under rule 1528 Cruise was denied access to all premises in this jurisdiction.

C. Appeal

Cruise filed a timely appeal from the Stewards' ruling. He also requested a stay of the decision, and this request apparently was denied.

STANDARD OF REVIEW

Under rule 1761, every decision of the Stewards, except a decision concerning disqualification of a horse, may be appealed to the Board. Under Business and

Professions Code section 19517, the Board may overrule a Stewards' decision if a preponderance of the evidence shows the Stewards mistakenly interpreted the law, if new evidence of a convincing nature is produced, or if the best interests of racing and the state may be better served.

REVIEW

A. License Suspension and Fine

Cruise challenges the Stewards' authority to suspend his license for the balance of the license term. He argues that such a suspension is tantamount to a revocation, since an apprentice jockey license cannot be renewed, and Stewards have no authority to revoke a license.

Under rule 1528, the Stewards "may suspend the license of anyone whom they have the authority to supervise³ or they may impose a fine or they may exclude from all inclosures in this State or they may suspend, exclude and fine." Only the Board may revoke a license. (Rule 1405.)

While there may be little practical difference between a license revocation and the license suspension imposed in this case, Cruise has cited no authority for circumscribing the Stewards' suspension power under rule 1528. Even though it remains in effect until the license expires, the suspension is technically a temporary action, whereas a revocation is permanent. The Stewards did not exceed their authority when they suspended Cruise's license for the balance of the license term.

Cruise challenges the Stewards' authority to suspend his license for matters that were known to the Board when it received Cruise's CI&I report⁴ in September 1997 and took no action to deny his license.

The evidence received by the Stewards established that in September 1997, some two months after Cruise applied for and was issued an apprentice jockey license, the Board received a CI&I report for him. This report showed that Cruise had been convicted in 1994, under the name Colin Campbell, of violating Penal Code section 484e(1) (petty theft of access card). On September 22, 1997, someone at the Board made an entry in the computer system that this was a non-disqualifying conviction. It is unknown whether the person who reviewed the CI&I report knew about Cruise's previous licensure as an exercise rider under the name Campbell (there is no entry on the report indicating such license), but it can be presumed that this person did not know

³ The Stewards have general authority and supervision over all licensees. (Rule 1527.)

⁴ Following receipt of a license applicant's fingerprints, the Bureau of Criminal Identification and Information (CI&I) in the Department of Justice provides the Board with a criminal history information report for the applicant. This report is often referred to as a "rap sheet."

about Cruise's previous licensure in Great Britain under the name Campbell. So, while the Board had reason to know that Cruise had falsely answered the question on his application regarding criminal convictions, the full extent of his non-disclosure was not known.

Had the Board elected in September 1997 to pursue some action based on Cruise's criminal conviction and false statement(s) on his application, it is not clear whether the appropriate action would have been to deny the application or to suspend or revoke the license. Given that the license had already been issued (apparently not on a provisional basis pending review of the CI&I report), the Board's authority to deny the license would seem questionable. For purposes of argument, however, it will be assumed that the Board had the authority to retroactively deny the license. Cruise contends that the Board's failure to pursue such an action constituted a determination that license issuance was proper notwithstanding the matters revealed by the CI&I report. He argues that the Stewards should be precluded from reopening the issue and suspending his license, because their action amounts to an agency reversing its original decision, and this was held to be improper in *Olive Proration Program v. Agricultural Prorate Commission* (1941) 17 Cal.2d 204.

Cruise's argument is not persuasive, because the holding in *Olive Proration* is not applicable here. In that case, a state commission conducted a full evidentiary hearing on a petition to terminate a program, after which it issued findings and a purportedly final and binding order denying the petition. A month later, without any further hearing or notice to interested parties, the commission secretly received additional evidence and then rescinded its prior order and granted the petition. The Court held that the commission exceeded its authority when it reconsidered and altered its original order. The facts of Cruise's case are clearly distinguishable, since the Board merely failed to deny his license application – it did not conduct a hearing or purport to make a final decision that licensure was in the public interest despite Cruise's criminal conviction and falsification of his application. And, as noted above, the Board did not have all the relevant information before it at the time the CI&I report was reviewed. Rule 1900 makes causes for denial or refusal also cause for suspension or revocation, and the Stewards did not exceed their authority by suspending Cruise's license for matters that could have been the basis for denying the license had the Board pursued such action.

Cruise challenges the Stewards' conclusion that he violated rule 1489(c). He contends that this conclusion is not supported by the findings, because only a material misrepresentation or false statement in the license application is actionable, and the Stewards made no finding that Cruise's false statements on his application were material.

Rule 1489(c) authorizes the Board to deny a license to any person "[w]ho has made any material misrepresentation or false statement to the Board or its agents in his or her application for license or otherwise...." In Finding XI, the Stewards found that

Cruise falsely answered “No” to the questions on the application requiring disclosure of convictions, prior license discipline, and use of another name in prior licensure. In their conclusions, they found that Cruise “intentionally avoided any reference to his criminal or prior license history under his given name of Colin Campbell.” (Although “prior license history” is somewhat ambiguous, it appears that the Stewards were referring to Cruise’s non-disclosure of his prior licensure, and not the fact that his prior license in California was suspended. In vacating the 1992 ruling, the Stewards apparently accepted Cruise’s assertion that he was unaware of the hearing or suspension and that his answer to the question regarding prior license discipline was not knowingly false.) While the Stewards did not make an explicit finding that Cruise’s false statements in response to the other questions were material, a finding of materiality is implicit in their conclusion that cause for suspension exists under rule 1489(c). Cruise’s challenge to this conclusion cannot be sustained.

B. Order Denying Future Apprentice Jockey Status

Cruise challenges the Stewards’ order that he be denied any future apprentice jockey status in California, arguing that this attempt to prospectively determine whether a license application will be granted is beyond the Stewards’ authority. On this point, Cruise must prevail. Issuance and denial of licenses are not among the functions the Board has delegated to the Stewards. The only licensing matter before the Stewards in this case was whether to suspend Cruise’s existing apprentice jockey’s license.

C. Interpretation of Rule 1500

Asserting that the Stewards misinterpreted rule 1500, Cruise challenges their conclusion that his application for an apprentice jockey license would have been denied if he had disclosed his prior licensing and riding history in the United Kingdom.

Rule 1500 provides, in relevant part:

(a) An apprentice jockey is a race rider who has ridden less than 40 winners or *less than two years since first having been licensed in any racing jurisdiction*, and who otherwise meets the license qualifications of a jockey.

.....

(c) Any combination of Thoroughbred, Appaloosa, Arabian or Paint races at authorized race meetings in the *United States, Canada or Mexico*, which are reported in the Daily Racing Form or other recognized racing publications, *shall be considered in determining eligibility for license as an apprentice jockey*; provided, however, that any person who has ridden as a licensed jockey in *any racing jurisdiction* shall have the burden to establish that the granting of an apprentice jockey license to him or

her is in the best interest of the rider and of Thoroughbred, Appaloosa, Arabian or Paint racing in this State. ... [Emphasis added.]

Cruise's position is that his licensing and riding history in Great Britain did not disqualify him from being licensed as an apprentice jockey in California, because only racing in the United States, Canada or Mexico may be considered in determining eligibility. From their conclusion, it is evident that the Stewards do not agree with Cruise's interpretation of rule 1500. Their interpretation of the rule would have disqualified Cruise for apprentice jockey status because he had first been licensed in "any racing jurisdiction" in 1988, more than two years before he applied in California.

Although the question of how rule 1500 should be interpreted is an interesting one, it was not a question that was properly before the Stewards. As such, it is not a matter that is properly before the Board in this appeal. The Stewards' conclusion about what would have happened if Cruise had disclosed his prior licensing and riding history on his application carries no binding authority.

D. Other Matters

Cruise makes numerous claims that certain findings are improper or that the omission of findings on certain matters was improper, but he has failed to establish that the Stewards made any legal errors. His argument that Findings II, V, XI, XII and XIV are irrelevant fails to recognize that the Stewards have broad latitude in making findings that convey the facts and background of the case. Cruise argues that the Stewards should have made findings on the CI&I report and the Board's September 1997 "determination" regarding licensure, and on alleged misconduct of Board investigators in disseminating the CI&I report, but there is no requirement that the Stewards make findings on all matters raised at the hearing. And it is not the function of the Board in reviewing a Stewards' ruling on appeal to rewrite the factual findings in the decision.

Cruise argues that Finding II ("Respondent was licensed and rode in Great Britain from 1988 to 1991 and in 1994 garnering a reported 3 winners from approximately 90 mounts") is improperly based on hearsay alone, but this is not correct. Cruise testified that he rode in England, with 3 winners and 99 mounts, and the hearsay records from The Jockey Club in Great Britain (Exhibit 8) supplement or explain his testimony.

Cruise argues that Finding III ("Steward Darrel McHargue testified that respondent and jockey agent JOE SANTOS appeared in June of 1992 to request that respondent be issued and [sic] apprentice jockey license. ...") is improperly based on hearsay alone and cannot be considered. However, this finding simply recites McHargue's testimony without finding that what he said was true. Aside from minor inaccuracies (Joe Santo's name is misspelled; and McHargue did not testify that Cruise

and Santo talked to him at the same time, as this finding implies), this finding is technically correct. Furthermore, the facts set forth in this finding are not a basis for a legal conclusion, i.e., this finding has no impact on the decision.

Cruise argues that the Stewards should have discussed the credibility of McHargue as a witness, but there is no requirement that they do so.

CONCLUSIONS

The Stewards exceeded their legal authority in ordering that Cruise be denied any future apprentice jockey status in California. Accordingly, Cruise has established that the Stewards “mistakenly interpreted the law” within the meaning of Business and Professions Code section 19517, and the Board may overrule this part of the decision.

With the exception of the above order, the Stewards acted within their authority in deciding this case and made no legal errors that would constitute a mistaken interpretation of the law. Cause does not exist under Business and Professions Code section 19517 for the Board to overrule the decision.

ORDER

The Board of Stewards’ Ruling No. 66, dated June 20, 1999, against apprentice jockey Garry Cruise, also known as Colin Campbell, is modified by vacating the order that Cruise be denied any future apprentice jockey status in California. As modified, the ruling is affirmed.

DATED: _____

NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings